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IN THE CIRCUIT COURT
OHIO COUNTY, WEST VIRGINIA

IN RE: TOBACCO LITIGATION
(MEDICAL MONITORING CASES)

CIVIL ACTION NO.
OO-C-6000

(Judge Arthur Recht
Judge Tod Kaufman)

DEPOSITION OF THEODORE A. WILSON
TAKEN BY MICHAEL GRUENLOH, ESQ.
ON BEHALF OF THE PLAINTIFFS
APRIL 21, 2000

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REPORTED BY SHERRIE L. MERZ
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DEPOSITION OF THEODORE A. WILSON, produced, sworn
and examined on the 21st day of April, 2000, at the
offices of Thompson Coburn, One Mercantile Center, Suite
3300, in the City of St. Louis, State of Missouri,
before Sherrie L. Merz, Certified Shorthand Reporter,
Registered Diplomat Reporter and Notary Public, in a
certain cause now pending in the Circuit Court of the
Ohio County, West Virginia, between CHRISTA BLANKENSHIP,
et al., PLAINTIFFS, and PHILIP MORRIS, INC., et al.,
DEFENDANTS.

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PLAINTIFF'S EXHIBITS

1 Wilson affidavit
2 Special executive report
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S T I P U L A T I O N

IT IS HEREBY STIPULATED AND AGREED by and between counsel for the parties that this deposition may be taken by Sherrie L. Merz and afterwards transcribed into print and that signature by the witness is not waived.

THEODORE A. WILSON

of lawful age, being first duly sworn to tell the truth, the whole truth and nothing but the truth, deposes and says on behalf of the Plaintiffs as follows:

DIRECT EXAMINATION

BY MR. GRUENLOH:

Q. Please state your name for the record, sir.

A. Theodore A. Wilson.

Q. Are you a Ph.D.?

A. I am.

Q. Dr. Wilson, my name is Mike Gruenloh. We met just a little while ago. I'm going to be taking your deposition today. I'll try to keep it as short as possible and as we agreed with counsel, we're going to try to avoid material that's already been gone over in prior depositions with you. Do you believe that cigarettes cause disease in human beings?

MR. McCONNELL: Objection, scope.

A. My personal belief is that they do.

Q. (By Mr. Gruenloh) Do you believe that

1 cigarettes are addictive?

2 MR. McCONNELL: Objection, scope.

3 A. My personal belief is that by my definition
4 of addictive, they are addictive.

5 Q. (By Mr. Gruenloh) What is your definition of
6 addictive?

7 MR. McCONNELL: Objection, scope, answered.

8 A. They are habit forming. They engender the
9 need to have, to get additional cigarettes. They
10 engender dependency.

11 Q. (By Mr. Gruenloh) When did you first reach
12 your opinion that cigarettes cause disease in human
13 beings?

14 MR. McCONNELL: Excuse me. So I don't have
15 to keep interposing objections, can I have running
16 objection to any questions regarding his personal
17 opinions about the addiction of cigarettes?

18 MR. GRUENLOH: That's fine. As a matter of
19 fact, I'm willing to stipulate all objections are
20 preserved for the purposes of the efficacy of the
21 deposition. I'm willing to do that.

22 MR. McCONNELL: I think that will help it
23 along.

24 A. Would you restate that?

25 Q. (By Mr. Gruenloh) When did you first reach

1 the opinion that cigarettes are harmful to human beings?

2 A. Well, I probably reached that opinion about
3 the time I began smoking which would have been at the
4 age of 15 or 16. I was certainly given strong arguments
5 about that by my mother in particular and others..

6 Q. Is it your opinion, Doctor, that when you
7 were 15 when you started smoking that you fully
8 understood all of the health risks that are associated
9 with smoking cigarettes?

10 MR. McCONNELL: Objection to form.

11 A. I would not claim that I understood at that
12 time all the health risks associated with smoking
13 cigarettes, no.

14 Q. (By Mr. Gruenloh) Well, when you were 15 did
15 you know that cigarettes cause cancer in human beings?

16 A. When I was 15, I'm not certain I understood
17 what cancer was so I suppose the answer is no.

18 Q. When you were 15, did you know that
19 cigarettes cause heart disease?

20 A. When I was that age, I had been given
21 information that there was such a thing as tobacco heart
22 and I would have correlated that I suppose if I thought
23 seriously about it with heart disease.

24 Q. When you were 15, did you know that
25 cigarettes caused emphysema?

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1 A. I'm almost 60. Emphysema was not a term that
2 was used by my understanding during the time that I
3 would have been thinking about these things so no, I
4 wouldn't, I would not have thought of it as emphysema.

5 Q. Okay. When you were 15, did you know that
6 cigarettes had ammonia in them?

7 A. I'm not certain I could recall whether I did
8 or not.

9 Q. When you were 15, did you know that
10 cigarettes had turpentine in them?

11 A. I couldn't say whether I had any recollection
12 that they had any turpentine, no.

13 Q. Do you know today as you sit here today
14 whether nicotine is a poisonous substance?

15 A. Nicotine in its concentrated form I have been
16 informed for a very long time is a poisonous substance,
17 yes.

18 Q. When you were 15, did you know that nicotine
19 was a poisonous substance?

20 A. I have a vague recollection of seeing that
21 point made in health texts when I was about that age.

22 Q. You saw that nicotine was a poisonous
23 substance in a health text when you were 15 years old?

24 A. That is my recollection that I have some
25 recollection, some sense of that.

1 Q. Doctor, when you were 15 years old, did you
2 know that the relapse rates for people who are trying to
3 quit smoking are similar to the relapse rates for people
4 who are trying to quit heroin? Did you know that when
5 you were 15?

6 MR. McCONNELL: Objection to form.

7 A. I'm not certain that I knew heroin existed at
8 age 15 so I think the answer would be no.

9 Q. (By Mr. Gruenloh) Okay. Now, you're a
10 fairly educated man, wouldn't you agree?

11 A. I'd like to believe so.

12 Q. And in fact if we compared you to the general
13 population of West Virginia, I would say you're probably
14 in the top 1 percent in terms of education, wouldn't you
15 agree?

16 MR. McCONNELL: Objection to form.

17 A. I haven't looked carefully at the breakdown
18 of West Virginians who have attended post secondary
19 institutions who have Ph.D.s. If that's the definition
20 of education I wouldn't be able to agree.

21 Q. (By Mr. Gruenloh) Wouldn't you agree that
22 you're generally more educated than the West Virginia
23 population as a whole?

24 A. I suppose as a matter of, again, without
25 knowing specifically that that's true, it would make

1 sense that if you're defining educated as having a
2 Ph.D., that would be true.

3 Q. Okay. Do you think education plays a role in
4 how informed one is with regard to the health risks of
5 smoking cigarettes?

6 A. It's, it can play a role, yes.

7 Q. Well, I believe in the past you testified
8 that in fact education is either the second or third
9 most important factor in determining one's knowledge of
10 the health risks of smoking, isn't that correct?

11 A. I'm not certain that I would have ordered
12 education and all of the other influences, sources of
13 information in that way. I may have put education
14 second or third in a list of a substantial number of
15 sources of information, sources that engender awareness.

16 Q. Okay. Well, tell me where education would
17 come in in terms of importance, one being informed about
18 the health risks of smoking?

19 A. Well, my, I guess the way I would think about
20 this or offer as a response to you would be to say as
21 I've said in the past that if one thinking about the
22 sources of awareness, the sources of that engender
23 awareness that impinge upon an individual that those
24 sources would begin within the family circle, begin at
25 home, family members and then extend outward. And of

10

1 course in America, one of the first experiences outside
2 of the home, the immediate family environment is school,
3 is schooling, is education.

4 So in that sense education becomes the next
5 place and it is an important place because as has been,
6 as I believe I have indicated in my affidavit, there was
7 and has been much information about smoking provided
8 through schooling, through education.

9 Q What year did you start studying the topic of
10 smoking and health?

11 A In a formal sense 1996.

12 Q What do you mean by formal sense, Doctor?

13 A Well, any person who is, who teaches courses
14 in American history and has been teaching as I had since
15 1965 has to deal or does deal with issues of
16 contemporary American history and so I tried to acquaint
17 myself and through some reading with the issues before
18 1996.

19 Q Did you specifically look into the topic of
20 smoking and health before 1996 or is it your testimony
21 that only through your position as a professional you
22 looked at it prior to 1996?

23 A My testimony would be the latter, only
24 through my, principally through my position as an
25 instructor in various courses that dealt with

1 contemporary American history.

2 Q. So in 1996 that's when you first started
3 looking specifically at the subject of smoking and
4 health?

5 A. That's correct.

6 Q. And certainly you would agree that you're
7 more educated now about the topic of smoking and health
8 than you were when you started the research back in
9 1996?

10 A. I hope that's the case, yes.

11 Q. And in fact, that is the case, isn't it,
12 Doctor?

13 A. I believe that would be fair to state, yes.

14 Q. Is it your testimony today that the residents
15 of West Virginia fully understand and appreciate all of
16 the health risks of smoking cigarettes?

17 A. I'm not in a position to say that all of the
18 residents of West Virginia fully understand the health
19 risks. My position would be that the vast majority of
20 residents of West Virginia have had enormous amount of
21 information provided to them about the health risks and
22 addictive propensities of smoking.

23 Q. Well, is it the same thing, Doctor, in your
24 opinion to have information provided to you in that
25 regard, smoking and health? Is it the same thing to say

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1 that, as it would be to say they are fully informed of
2 the smoking risks?

3 A. Well, we get into semantic issues here, what
4 is meant by fully informed. In my view, in my opinion,
5 and that is my opinion as a historian, not as a
6 scientist and dealing with communication theory or
7 whatever, reception of information, my opinion as a
8 historian is that there has been so much information
9 made available to people in West Virginia as there has
10 been to Americans generally, that this leads to
11 knowledge awareness, substantial significant awareness
12 on their part and that has been the case for a very long
13 time.

14 Q. You have children, don't you, Doctor?

15 A. I do.

16 Q. How many?

17 A. Two.

18 Q. Wouldn't you want your children to be fully
19 informed of the risks of any product that they were
20 going to use?

21 MR. McCONNELL: Objection to form.

22 A. I have attempted to ensure that my children
23 are fully informed insofar as I'm able to do so about
24 products that they may use, yes.

25 Q. (By Mr. Gruenloh) Is it your testimony today

13

1 that the residents of West Virginia are fully informed
2 as to the addictive nature of cigarettes?

3 A. Well, we get into the same issue with regard
4 to what fully informed means. My testimony is that for
5 a very long time there has been information provided,
6 very large amounts of information provided to the people
7 of West Virginia about the addictive nature of smoking.
8 That information comes, begins with the personal
9 observation and personal experience, their personal
10 observation and their personal experience.

11 Q. Well, let me ask you this. Is it your
12 opinion that the residents of West Virginia know
13 everything that you know about the health risks of
14 smoking as you sit here today?

15 A. I could not claim that to be the case.

16 Q. Have you reviewed the third amended complaint
17 in this case?

18 A. I have done so.

19 Q. Have you reviewed any other documents?

20 A. I was given along with the third amended
21 complaint a couple of weeks ago the deposition of your
22 person, Dr. Burns, David Burns, and also last evening I
23 was given the depositions and interrogatories done very
24 recently of the two named plaintiffs in the third
25 amended complaint, Christa Blankenship and -- is it Mae

1 Sibbo?

2 Q. The deposition of Dr. Burns that you reviewed
3 was the one that was taken in this case?

4 A. That's my understanding.

5 Q. Have you reviewed any other documents in
6 preparation for this deposition?

7 A. Well, I reviewed my affidavit, the affidavit
8 that was submitted previously and all of the, or I
9 attempted to review all of the relevant material that
10 supported that affidavit.

11 Q. When you say all of the material that
12 supported that affidavit, are you referring to the
13 information that you've cited in your report or are you
14 referring to other information?

15 A. The information that I cited but of course as
16 I indicated in the affidavit the cited information is
17 only a very small part of the totality of the material
18 relative, generally relative to these issues.

19 Q. Okay. Aside from the third amended
20 complaint, the deposition of Dr. Burns and depositions and
21 interrogatories of Mae Sibbo and Christa Blankenship and
22 the materials we just discussed that are cited in your
23 report, are there any other reliance materials that you
24 have provided to your counsel or that you have used in
25 order to form your opinion in this case?

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1 A. I think that's -- I mean, I did get of course
2 materials relating to the McCune case, that is, two
3 complaints essentially in the McCune case, if that is
4 viewed as part of this case.

5 Q. The first complaint and the first amended
6 complaint?

7 A. That's my recollection, yes.

8 Q. All right. Are there any other documents
9 that you referred to, Doctor, aside from what we've just
10 discussed?

11 A. Take me through that list again.

12 Q. The first amended, third amended complaint,
13 first complaint, deposition of Dr. Burns in this case,
14 depositions and interrogatories of Mae Sibb and Christa
15 Blankenship and of course the information that you
16 reviewed and which is cited in your report.

17 A. And in addition other information I would say
18 as I indicated, other information that was not cited
19 directly but which I have had or my research assistants
20 have generated that is relevant, that is relevant to
21 these issues.

22 Q. Okay. Why don't we tie this up before we go
23 on. Aside from all of that we just mentioned, have you
24 provided your counsel with any other documents or has
25 your counsel provided you with any other documents for

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1 your testimony in this case?

2 A. That's not taken care of in this, I do not
3 recall any additional information.

4 MR. McCONNELL: Can we go off the record half
5 a second?

6 (Discussion held off the record.)

7 Q. (By Mr. Gruenloh) And Doctor, you've
8 reviewed the expert report of Dr. Burns, not the
9 deposition of Dr. Burns, is that correct?

10 A. That is correct.

11 Q. Do you know who Mae Sibb and Christa
12 Blankenship are?

13 A. Two individuals residing in West Virginia who
14 are the named plaintiffs in this case.

15 Q. In fact are the putative class members in
16 this case?

17 A. I accept the legal terminology.

18 Q. Have you met with Mae Sibb or Christa
19 Blankenship?

20 A. I have not.

21 Q. And you said you just reviewed their
22 depositions and interrogatories last evening?

23 A. Yes.

24 Q. Okay. Prior to last evening, had you
25 reviewed anything regarding Mae Sibb or Christa

1 Blankenship including their records or anything else
2 about them?

3 A. No.

4 Q. Have you conducted interviews of any other
5 class members in this case?

6 A. No.

7 Q. Have you conducted interviews of any West
8 Virginia residents?

9 A. No.

10 Q. Have you reviewed any survey data concerning
11 the number or percentage of smokers in the state of West
12 Virginia?

13 A. I do not recall having done so though I have
14 seen several theses that deal to some degree with that
15 but I would have to say I do not recall having done so.

16 Q. Have you seen or reviewed any survey data
17 regarding the smoking prevalence in the United States
18 overall?

19 A. Yes, I think I have seen in the course of my
20 research some of that kind of material, some of that
21 kind of information.

22 Q. Okay. As specifically as you're able, can
23 you tell me in what context you reviewed that
24 information?

25 A. My aim would have been to try to understand

1 for contextural purposes, for background purposes who
2 has been, who have been and who are smokers over time
3 and so I've tried, my research assistants have gotten me
4 some of that information.

5 Q. Okay. So you've in fact relied upon
6 demographic information is what you're telling me?

7 A. Demographic information, information done
8 again without being able to be very specific, done to
9 try to see what groups within a particular, what age
10 groups for example were smoking, prevalence of smoking
11 and so forth.

12 Q. Can you tell me how you've relied upon that
13 information?

14 A. For the purpose of this affidavit, it's been,
15 it's been principally as background information, does
16 not come directly at this point at least, come directly
17 in to bear.

18 Q. Okay. Have you ever relied upon survey --
19 this may be a bit broad so answer as best you're able --
20 have you ever relied upon survey or demographic data for
21 any other purpose aside from your report in this case?

22 A. I'm not certain that I know --

23 Q. All right, let's limit it to survey or
24 demographic data relating to smokers. Have you ever
25 relied upon that sort of data aside from the context of

1 your opinion in this case?

2 A. Well, my aim has been to seek to understand
3 the sources of awareness over time about the health
4 risks and addictive propensities of smoking. I suppose
5 the answer, the best answer I can offer is that a
6 historian wants to know who is being, wants to know
7 something about who is being influenced in a variety of
8 ways over time. So I tried to gain a picture to create
9 a picture for myself as contextural information. I'm
10 not certain that's helpful but I hope it is.

11 (Plaintiff's Exhibit No. 1

12 marked for identification.)

13 Q. (By Mr. Gruenloh) Doctor, I'm handing you
14 what's been marked as Exhibit 1. Incidentally, before we
15 do that, I see that you have before you a folder and a
16 notebook. Have you brought those with you to the
17 deposition?

18 A. I brought this with me.

19 Q. Are there any notes or anything on that
20 report that were not in --

21 A. No.

22 Q. And the notebook that is underneath there,
23 does that contain any notes or have any information?

24 A. (Indicating.)

25 MR. McCONNELL: Just for the record it was

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1 blank.

2 Q. (By Mr. Gruenloh) Is Exhibit 1 your report
3 in this case?

4 A. Yes, it is. It's my affidavit, yes, I guess
5 that's the report affidavit, yes.

6 Q. Was that report prepared specifically for
7 this case, Doctor?

8 A. Does this case encompass what I have referred
9 to, what I've thought of as the McCune case?

10 Q. Yes.

11 A. Yes, then it does.

12 Q. When you prepared that report, did you start
13 from scratch or did you start with a report that you had
14 used in a prior case and add on to that report?

15 A. I don't have a template but I have done as
16 I've indicated in prior depositions to make clear, I
17 have done research relating to other states and other
18 cases and that information has been, was useful, was
19 helpful in causing me to go forward with the research
20 for this case that led to this affidavit.

21 Q. Okay. So when you put pen to paper and
22 started on your report for this case, you started with a
23 blank sheet of paper, is that correct?

24 A. I started with a blank sheet of paper, of
25 course also being able to refer to what I had done

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1 previously.

2 Q. Are there any drafts of that report?

3 A. There are no drafts of this report.

4 Q. Let's go back to the putative class members
5 in this case for a moment, Mae Sibb and Christa
6 Blankenship. You said that you had not interviewed them
7 or met with them or prior to last evening looked at
8 anything regarding them, isn't that correct?

9 A. That is correct.

10 Q. Do you have any information that would
11 confirm that all of the things that you've set out in
12 your report regarding the knowledge of the health risks
13 of smoking are actually known by any resident of West
14 Virginia?

15 A. On the basis I can say as a first response,
16 as a response on the basis of my quick review of the
17 depositions given by, deposition given my Christa
18 Blankenship that she referred to knowledge. She
19 indicated that she had knowledge of a number of the, of
20 several of the sources of information that I refer to in
21 my affidavit.

22 Q. Okay. What sources of information are you
23 referring to?

24 A. She knew about the Surgeon, as I recall
25 correct, she knew about the Surgeon General's report in

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1 1964, for example.

2 Q. Do you know whether -- you're referring to
3 Mae Sibbo or Christa Blankenship?

4 A. No, Christa Blankenship.

5 Q. Do you know what Christa Blankenship said
6 about the Surgeon General's report in 1964?

7 A. I don't recall either way what she said about
8 that.

9 Q. Okay. Were there any other sources of
10 information that you recall?

11 A. That's the one that jumps out at me. Both, I
12 think Christa Blankenship also acknowledged, I think I'm
13 correct in recalling again on the basis of this rapid
14 review that Christa Blankenship acknowledges seeing
15 references in the newspaper that she had, she read. I
16 think that was the Charleston Daily Mail on various
17 issues regarding smoking, warnings about the dangers of
18 smoking.

19 Q. I take it that it's still your opinion that a
20 wide range of sources informed residents of West
21 Virginia in particular about the claims of addictive and
22 health threatening consequences of smoking, is that
23 still your opinion here today, Doctor?

24 A. It is.

25 Q. And you're able to reach that conclusion

1 without interviewing a single member of the West
2 Virginia class, is that your testimony?

3 A. I'm saying this information was available to
4 all or almost all persons living in West Virginia at the
5 time the information appeared, yes.

6 Q. So the answer to my question is yes, you're
7 able to reach that conclusion without in fact
8 interviewing a single member of the class?

9 A. I'm comfortable about saying this information
10 was generally available, yes.

11 Q. So the answer to my question as to whether
12 you've been able to form your opinion without
13 interviewing a single member of the class is yes, is
14 that correct?

15 A. Yes.

16 Q. Do you have any plans to interview or meet
17 with any of the class members in this case?

18 A. The methodology that I followed does not
19 suggest that that would be desired or permitted at this
20 point, useful at this point.

21 Q. All right. Let's look at Exhibit 1 for a
22 moment. I don't want to look at any specific paragraph
23 right now but in paragraphs 3 through 33, you've set out
24 all the information which you believe and I'm using your
25 words, the American society and the public had access

1 to, correct?

2 A. I've set out in those paragraphs examples
3 appropriate, what I deem to be appropriate examples of
4 the range of information that Americans had about the
5 health risks and addictive issues associated with.
6 smoking.

7 Q. Do you agree that the cigarette
8 manufacturers, the defendants in this case, are in fact
9 members of the American society and the public and thus
10 they have the same information that you've set out in
11 paragraphs 3 through 33 of your report?

12 A. I can't, I haven't interviewed members of the
13 tobacco companies but I would acknowledge that people
14 who work at tobacco companies are members of American
15 society.

16 Q. Would you have to interview members of the
17 tobacco or employees of any cigarette company in order
18 to reach that conclusion?

19 A. I was seeking to be ironic, not very
20 usefully. No, I would not need to do so.

21 Q. So you do agree that cigarette manufacturers
22 are members of American society and the public and
23 therefore they have the same information that the West
24 Virginia residents have, isn't that correct?

25 A. That's correct.

1 Q. Well, in fact since it was their product they
2 probably had even more information about the health
3 risks of smoking compared to the average West Virginian,
4 wouldn't you agree with that, Doctor?

5 MR. McCONNELL: Objection to form.

6 A. I have no basis for saying so other than the
7 allegations to that effect that have been available for
8 a very long time, yes.

9 Q. (By Mr. Gruenloh) Isn't that a logical
10 conclusion since they're the manufacturer of the product
11 and they dealt with the product every day?

12 MR. McCONNELL: Same objection.

13 A. I'm not certain that, and I don't know
14 actually enough about the industrial practices that
15 existed to make that, reach that conclusion. People in
16 my view sometimes do produce things without thinking
17 seriously about what they're producing, opinion.

18 Q. (By Mr. Gruenloh) Doctor, wouldn't you agree
19 that the head of research and development for Philip
20 Morris probably knew more about the dangers of smoking
21 than Mae Sibb or Christa Blankenship?

22 MR. McCONNELL: Objection to form.

23 A. I have no basis for saying that. It would
24 make reasonable sense to reach that conclusion, yes.

25 Q. (By Mr. Gruenloh) Can you tell me, Doctor,

1 what conclusion did you reach from reviewing all of the
2 information which you've cited in between paragraphs 3
3 and 33 of your report?

4 A. My conclusion was and is that there has been
5 available to Americans in general and to people in West
6 Virginia in particular an enormous amount of information
7 and -- about the risks of smoking and the addictive
8 qualities of smoking and that has in my view engendered
9 widespread awareness of these issues.

10 Q. Awareness of what issues?

11 A. Of the issues that we've been discussing,
12 that is, that smoking is dangerous to one's health and
13 that it is addictive as commonly understood, as that
14 term was commonly understood.

15 Q. Am I correct that in paragraphs 3 through 33
16 you have not included a single example of the tobacco
17 industry, a public statement by any cigarette
18 manufacturer coming out and saying yes, our products are
19 harmful, yes, they are addictive?

20 A. My recollection is that I have not done so.
21 I think you're correct in making that statement. I
22 would have to review this again very carefully but I
23 believe you're correct.

24 Q. At paragraph 3 and again at paragraph 33 you
25 indicate that there are many examples of how the public

1 was informed which did not get included in your report,
2 isn't that correct, Doctor?

3 A. That's correct.

4 Q. And in all of those many examples which did
5 not get included, are there any statements by cigarette
6 manufacturers that say yes, our product is harmful to
7 the health, yes, it is addictive?

8 A. Statements by cigarette manufacturers?

9 Q. Yes, sir.

10 A. It is not, I do not recall seeing until very,
11 very recently statements by cigarette -- in public, that
12 is, that have been made known publicly, statements by
13 cigarette company representatives that specifically say
14 those things.

15 Q. And you haven't included in this report,
16 Exhibit 1, any of the thousands of public statements
17 that cigarette manufacturers have made denying that
18 their products are harmful to the health and that they
19 are addictive, have you?

20 MR. McCONNELL: Objection to form.

21 A. I have not. That does not imply that I have
22 not seen or have knowledge of their existence but I have
23 not cited them in this report.

24 Q. (By Mr. Gruenloh) Well, you've certainly
25 come across those public statements on behalf of the

1 industry made by the industry that, denying cigarettes
2 are harmful, haven't you?

3 A. I have seen statements over a considerable
4 length of time that raise questions about the addictive
5 nature of smoking and also as defined at the time and
6 also about the health risks claimed to be associated
7 with smoking, yes.

8 Q. What do you mean by statements which raise
9 questions about the health risks of smoking?

10 A. Well, I mean, for example in the 1950s, there
11 was what was perceived to be a controversy about whether
12 smoking was in fact a cause and whether there was a
13 causal relationship between smoking and lung cancer and
14 there were scientists who said yes, there is clearly a
15 causal relationship. Some scientists said no, there is
16 no proven causal relationship. Representatives,
17 spokespersons for the tobacco companies when they
18 addressed that issue, when that issue was addressed
19 tended to be on the side of not proven in terms of that
20 controversy.

21 Q. Okay. We'll come back to that in just a
22 moment but let me ask you, am I correct that you have
23 not included in your report a single example of any
24 cigarette manufacturers, public statement denying the
25 harmful effects of cigarette smoking?

1 A. As I said earlier, my recollection is I did
2 not in this affidavit.

3 Q. And yet you have come across them in the
4 course of your research, isn't that correct, sir?

5 A. I have come across them, yes.

6 Q. Well, do you agree that the tobacco industry
7 attempted to shape the common knowledge of the American
8 public with regard to the health risks of smoking?

9 MR. McCONNELL: Objection to form.

10 A. My response I think is that on the basis of
11 my research, in terms of popular awareness, there is
12 evidence of efforts by spokespersons for the tobacco
13 companies, tobacco industry, I suppose, seeking to shape
14 public awareness. I would say in carrying on, that in
15 my judgment those efforts were relatively less numerous
16 and also not very effective.

17 Q. (By Mr. Gruenloh) Well, my next question was
18 going to be what effect do they have but . . .

19 A. Well, I was hoping -- my opinion was that, is
20 that based upon work as a historian for many years that
21 people do not necessarily trust claims offered by the
22 manufacturers of products about the benefits of those,
23 alleged benefits of those products. And therefore
24 that's because there is awareness on the part, very
25 clear awareness on the part of the consumer that self

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1 interest is involved. Whereas statements that do not
2 appear to be self interested, statements by family
3 members, physicians, school teachers, public health
4 advocates are taken with more seriousness. That is a
5 view that I hold and I believe there is reasonable
6 support for that view.

7 Q. Is it your testimony today that the tobacco
8 industry was not effective in influencing the knowledge
9 of the American public with regard to the dangers of
10 smoking and health?

11 A. I think that would be my testimony, yes.

12 Q. Have you done any analysis where you have
13 compared the statements that the industry has made with
14 regard to the smoking controversy that you talked to me
15 about a little while ago?

16 A. What sort of analysis?

17 Q. Have you made any effort to collect all of
18 the public statements of the tobacco industry where
19 they've denied that cigarettes are harmful to people's
20 health?

21 A. My research has sought to be comprehensive
22 with regard to the public statements on these issues,
23 public information made available about these issues.
24 So I have, I wouldn't claim it to be an absolutely
25 complete set of documentation of the type that I have

1 available to me relating to public utterances and public
2 efforts by tobacco companies. I have not done -- or
3 maybe I'm giving you the next follow-up question -- I
4 haven't done in a formal way a quantitative evaluation,
5 that is, putting those kind of utterances against all of
6 the other utterances. My strong, as I indicated in
7 previous depositions, my very convinced opinion is that
8 the utterances of this type by the, on the tobacco
9 companies' side in terms of shaping, seeking to shape
10 public opinion do not amount nearly to as high as big a
11 pile so to speak as the other side.

12 Q But you haven't done that analysis?

13 A I haven't done that analysis in terms of
14 stacking them up. I said in the past, using the example
15 of the Atlantic Ocean, in previous depositions. I could
16 do that but . . .

17 Q In other words, in your report what you've
18 done is you've set out all of what you believe to be the
19 information out in the public about the harmful nature
20 of tobacco but you haven't compared that to the
21 statements made by the tobacco industry denying that,
22 isn't that correct?

23 MR. McCONNELL: Objection to form.

24 A I haven't done that in the affidavit. I have
25 done that I would say intellectually in the process of

1 reaching the conclusions that I offer in the affidavit.
2 I have not -- well, I think that is appropriate.

3 Q. (By Mr. Gruenloh) When you say you've done
4 it intellectually, in order to do it intellectually, you
5 have to look at all of those tobacco industry denials,
6 the harmful effects of smoking, don't you?

7 MR. McCONNELL: Objection to form.

8 A. I would agree that as they have been a part
9 of all of this universe of information, I have looked at
10 them and taken them into account.

11 Q. (By Mr. Gruenloh) Okay. And yet you haven't
12 cited any of those documents in your report, isn't that
13 correct?

14 A. That's correct.

15 Q. Do you still have the documents that you're
16 referring to, the cigarette manufacturers' public
17 statements in your possession?

18 A. I do. Mostly of course they are in the
19 nature, for much of the period that I deal with they're
20 in the nature of a commentary on or a rebuttal to some
21 story about a new discovery or an analysis of the
22 dangers of smoking so yes.

23 Q. Take five minutes right now?

24 (Break in proceedings.)

25 Q. (By Mr. Gruenloh) Doctor, if a product is

1 worse for you than you thought it was, wouldn't you want
2 the manufacturer to tell you about it?

3 MR. McCONNELL: Objection to form.

4 A. I'm not certain that I can follow that. Will
5 you take me through it again?

6 Q. (By Mr. Gruenloh) Yeah, sure. If you're a
7 current user of a product and you know that it's bad for
8 you but you don't know how it's bad for you, how bad it
9 is for you, I'm sorry, wouldn't you want the
10 manufacturer of that product to let you know about it?

11 MR. McCONNELL: Same objection.

12 A. I suppose my response would be that if I were
13 a user of a product and I knew it was bad for me but it
14 was a legal product, I would understand, have some
15 understanding of the corporate circumstances that would
16 lead to the manufacturer of that product not providing
17 information. In an ideal world, I suppose I would have,
18 would want that information to be available were I to
19 believe what the manufacturer were saying in general. I
20 don't know where that one went.

21 Q. (By Mr. Gruenloh) Now, earlier you said you
22 did an intellectual analysis where you weighed what was
23 out there about the dangers of cigarette smoking versus
24 the tobacco industry denials of the dangers of tobacco,
25 isn't that correct?

1 A. That's correct.

2 Q. Okay. In the course of that intellectual
3 analysis, did you review -- strike that. Do you know
4 what the marketing budget for Philip Morris was in 1960?

5 A. I couldn't say with any specificity.

6 Q. Do you know what the marketing budget for
7 Philip Morris was in 1970?

8 A. I couldn't say with any specificity.

9 Q. Same question, 1980?

10 A. Same response.

11 Q. We also a little earlier talked about the
12 smoking and health controversy.

13 A. Yes.

14 Q. Can you again tell me what your definition of
15 the smoking and health controversy is, what your
16 understanding of that is?

17 A. My understanding of what happened was that as
18 scientists researchers increasingly found statistical
19 correlations between smoking and lung cancer and as some
20 scientists were beginning to find evidence of possible
21 experimental links though not conclusive experimental
22 links between tobacco, tars and so forth, I'm thinking
23 here of the Evarts Graham, Ernest Wynder experiments
24 here at Washington University at St. Louis, as that kind
25 of information was coming forward, other than scientists

35

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1 statisticians disputed that view saying that lung cancer
2 might well have been the result, might well be the
3 result of an increasingly open eyed society and smog and
4 atomic testing and all kinds of other things so that
5 there was for a period of time. My understanding is
6 based upon the portrayal of what happened, there was for
7 a period of time a legitimate controversy in terms of
8 whether there was a proven causal link.

9 Q. Do you remember at the beginning of this
10 deposition I asked if you believe smoking causes cancer
11 and you believed smoking is addictive and you told me
12 yes, you believe it does cause cancer and it is
13 addictive?

14 A. Yes.

15 Q. Do you believe there is a smoking and health
16 controversy today as we sit here in this room?

17 MR. McCONNELL: Objection to form.

18 A. My belief is there is not a smoking and
19 health controversy.

20 Q. (By Mr. Gruenloh) When we first talked about
21 the smoking and health controversy a moment ago, I think
22 you mentioned the year 1950. Is it your understanding
23 that the smoking and health controversy started in 1950?

24 A. Well, there were people, there was some
25 scientific evidence even before World War II that, of a

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1 statistical relationship that -- there is the work of
2 Raymond Purle who is a well known statistician at Johns
3 Hopkins who identified, correlated smoking and increased
4 risk of mortality, not lung cancer specifically. So
5 even earlier that is but I think 1950 would seem to me
6 to be -- 1949, 1950, appropriate kind of date.

7 Q. Do you believe that there was a controversy
8 between smoking and health in the 1960s?

9 A. I think the controversy extended into the
10 1960s, yes.

11 Q. Do you believe there was also a controversy
12 between smoking and health in the 1970s?

13 A. My opinion based on the information I have is
14 that the controversy effectively had ended by the mid to
15 late 1960s.

16 Q. About '68, '69?

17 A. I wouldn't be able to pin down. I probably
18 could offer a judgment but I wouldn't be able to offer a
19 useful judgment right now.

20 Q. But it's your testimony by the mid to late
21 60s the smoking and health controversy had in fact
22 ended?

23 A. For the majority of people who were
24 considering thinking about these kinds of issues, yes.

25 Q. What do you mean by that?

1 A. There were a few people who perhaps still
2 today say there is no correlation but I think that my
3 sense is looking at this as a historian, at this period
4 as a historian that the vast majority of scholars and
5 others who were looked at as being responsible for,
6 looked at as being reputable would have said this is a
7 proven issue by the mid to late 1960s.

8 Q. And if there were a rip-roaring controversy
9 on the issue of smoking and health, how would that
10 affect the common knowledge of the general public as to
11 the dangers of smoking?

12 A. My opinion and I believe it is supported by
13 substantial evidence is that with regard to this issue,
14 the public generally anticipated or the public's view
15 was in advance of the scientific position, that is, that
16 Americans for a period even before the 1950s as a
17 general notion understood that if you draw hot smoke
18 into your lungs with various kinds of particulates in
19 that smoke, that some nasty things may well happen to
20 you.

21 Q. Do you believe that the public knew that
22 smoking could cause cancer before Dr. Wynder did?

23 A. The public's, the public's understanding of
24 cancer, I think it's demonstrable, was extremely vague
25 and amorphous. In fact, if you were my age, you would

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1 recall that cancer tended to be mentioned in whispered
2 tones because there was so little grasp of what it was,
3 what the mechanisms were and so forth in the 1940s for
4 example, when I was a child. So I would say, again I
5 guess this long winded response to your question is that
6 the public's understanding that there's a connection to
7 cancer would not necessarily have been in advance but
8 the public's viewed popular awareness that there were
9 negative, medical negative health consequences to
10 smoking of various sorts did exist.

11 Q. Are you aware that the cigarette
12 manufacturers embraced the smoking and health
13 controversy and did their best to engender that
14 controversy in the minds of smokers?

15 MR. McCONNELL: Objection to form.

16 A. I'm aware of allegations to that effect, yes.

17 Q. (By Mr. Gruenloh) Do you believe that they
18 did that, Doctor, or do you know?

19 A. I don't know absolutely definitely because I
20 haven't seen the documents from the tobacco
21 manufacturers that would say yea or nay.

22 Q. Well, would it affect your opinion if you
23 found out that that tobacco industry did in fact help
24 engender the smoking and health issues and did provide a
25 crutch to lean on so to speak?

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1 MR. McCONNELL: Objection to form.

2 A. If that were the case and I'd be willing to
3 entertain the hypothesis, I think my response is that I
4 do not believe it would have had a substantial effect.
5 People made decisions about continuing to smoke for
6 reasons, for a variety of reasons. Individuals made
7 decisions for a very large number of reasons to continue
8 to smoke and my sense is that justifying that in terms
9 of being reassured by, as you suggest, the tobacco
10 companies would not be a substantial or significant
11 element.

12 Q. Would it affect your opinion in any way,
13 Doctor, if you found out that the tobacco industry had
14 spent millions of dollars on programs which were
15 specifically directed to underage smokers, smokers
16 under the age of 18 years -- I'm sorry, consumers under
17 the age of 18 years?

18 A. I'm not sure how I could respond to that. I
19 mean, my opinion is that there is, was widespread
20 general awareness about these dangers and risks, you're
21 saying that there were -- are you saying I guess I would
22 ask, that there were, there is absolutely demonstrable
23 evidence that the tobacco companies were telling
24 smokers, consumers, under the age of 18 that there were
25 no dangers?

40

1 Q. Let's assume for a moment that they did in
2 fact have a marketing campaign where they spent millions
3 of dollars in marketing monies on programs which were
4 directed at underaged consumers. Okay. Let's assume
5 that for a moment. Would that affect the opinions that
6 you've given in this case in any way?

7 MR. McCONNELL: Objection to the incomplete
8 hypothetical.

9 A. If I can follow, if I do follow what your
10 hypothetical is, I think my response is no. My sense
11 is, was -- is that people chose, decided to begin
12 smoking as I did as an act of adolescent rebellion and
13 whatever -- I mean, I wouldn't say all people did that
14 but that whatever would make that seem to be, whatever
15 would be claimed by the tobacco companies, that would
16 make that even riskier. Might well be, I mean, it
17 wouldn't affect their awareness, I guess I'm trying to
18 say. It wouldn't affect their decisions.

19 Q. (By Mr. Gruenloh) Do you have any basis for
20 that opinion, Doctor?

21 A. Personal experience and I do recall Christa
22 Blankenship if I'm saying this correctly at age 16
23 saying that she decided to begin smoking because she
24 felt that it relieved stress and she got this from her
25 friends and she was going to do it because she was

1 unhappy and that's what she wanted to do. I mean,
2 that's not an unusual response.

3 Q. And again you don't know how much money
4 Philip Morris spent in any year on any of their
5 marketing campaigns, do you?

6 A. As I say, not with specificity.

7 Q. Would you mark this as Exhibit No. 2.

8 (Plaintiff's Exhibit No. 2
9 marked for identification.)

10 Q. (By Mr. Gruenloh) Doctor, I'm handing you
11 what's been marked as Plaintiff's Exhibit No. 2, the
12 1971 Special Executive Report of the Tobacco Institute.
13 If you could turn to the second page of Exhibit No. 2
14 and under the heading Special Executive Report,
15 incidentally this is from the desk of William Kloepper,
16 Vice President of the Public Relations of the Tobacco
17 Institute. It reads and I quote, on December 1st, 1970
18 the Tobacco Institute published an advertisement in the
19 New York Daily News, the New York Times and the
20 Washington Post entitled the question about smoking and
21 health is still a question. Do you see that, Doctor?

22 A. I do.

23 Q. Do you agree with that statement that as of
24 February of 1971 that the question about smoking and
25 health was still a question?

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1 A. My opinion as a historian looking back at the
2 information I have is that this is not, it may have been
3 a question to them but if they're referring to is it
4 still a question to the scientific community, no.

5 Q. So is it your opinion that the Tobacco
6 Institute was trying to engender a controversy that
7 wasn't there?

8 MR. McCONNELL: Objection to form.

9 A. I have no opinion as to what the Tobacco
10 Institute was seeking to do other than as stated in
11 this. I mean, if I can read through this. On the third
12 page they say we mean what we say about our commitment
13 to honest scientific research to help answer the
14 questions about tobacco. Well, they're obviously
15 arguing that a question still existed. Whether what
16 their motives for doing so were, I can't say.

17 Q. (By Mr. Gruenloh) Look at the third page in
18 the document and the next sentence reads I can assure
19 you -- again this is from the desk of Horace Kornegay --
20 I can assure you no amount of carelessness about the
21 facts for which some of the anti-tobacco forces are
22 responsible is going to put us off course in seeking the
23 truth which is the only way to resolve the continuing
24 smoking and health controversy.

25 So Doctor, do you believe there is a

1 continuing smoking and health controversy as of December
2 15th, 1970, the date of this letter?

3 A. For the scientific community and for the
4 public in general, I do not believe that that was, that
5 there was a continuing smoking and health controversy.

6 Q. So Mr. Kornegay then here in this letter is
7 saying something that's in conflict with the scientific
8 community at that time, isn't that correct, sir?

9 A. That would appear to be the conclusion.

10 Q. Let's turn to the fourth page of Exhibit
11 No. 2, please. Can you describe that for me.

12 A. This is a statement or advertisement I
13 suppose reprinted from the Washington Post and it says
14 other newspapers dated December 1st, 1970. It offers a
15 position. Title is, is the question about smoking and
16 health still a question. And it is, it's made clear
17 that these, as it says these facts and statements are
18 presented by the Tobacco Institute.

19 MR. McCONNELL: Ted, if you want to take a
20 second to go ahead and read it, go ahead.

21 A. Yeah.

22 (Witness complies.)

23 Q. (By Mr. Gruenloh) You're welcome to read it,
24 Doctor, but I'm not going to ask you any specific
25 questions about it.

1 A. Okay, fine. I skimmed it.

2 Q. In your intellectual analysis that you did
3 where you weighed the denials of the tobacco industry on
4 one hand versus the information that was out there and
5 the public knowledge on the other hand, did you consider
6 that document?

7 A. My recollection is that I did see this
8 document in this form, yes, or some such form, yes.

9 Q. Did you consider the letter that we went over
10 just a moment ago from Mr. Kornegay?

11 A. No, I did not because I did, I had not seen
12 that.

13 Q. Okay. And you said you still have all of the
14 materials that you considered when you did this
15 intellectual analysis, isn't that correct, sir?

16 A. That's correct.

17 Q. Okay. So if we looked at those materials, we
18 would find that document or some form of that document?

19 A. Some form of that document, right.

20 Q. None of the materials that we've just gone
21 over in Exhibit No. 2 are included in your report, isn't
22 that correct, sir?

23 A. That's correct.

24 Q. Give me just one moment. If you could turn
25 back to the ad which I believe is the fourth page of

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EXHIBIT

1 Exhibit 2. I do have one or two questions for you. Have
2 you scanned this document?

3 A. I have.

4 Q. Okay. The first paragraph reads for the past
5 two decades hundreds of scientists have performed
6 thousands of experiments and written millions of words
7 in a dedicated effort to explore the question of smoking
8 and health. Result, so far in spite of this massive
9 effort there are eminent scientists who question whether
10 any causal relationship has been proved between
11 cigarette smoking and human disease, including lung
12 cancer, coronary heart disease or emphysema. They
13 believe that years more of exhaustive investigation will
14 be required to clear up what is indeed now a muddy
15 picture. Do you see that, sir?

16 A. I do.

17 Q. Do you agree with the characterization at the
18 end of that paragraph, that the question about smoking
19 and health was still a muddy picture in 1970 when this
20 article was published?

21 MR. McCONNELL: Objection to form.

22 A. My opinion and I'm not, I wouldn't claim to
23 be an expert on all of these, on all of these kinds of
24 issues, my opinion is that there might still be some
25 silt in the water but I would not characterize this as a

1 muddy picture.

2 Q. (By Mr. Gruenloh) Well, I think you
3 testified earlier in fact that the question was settled
4 by 1970, didn't you?

5 A. But what I'm trying to say is that in fact,
6 the first sentence in that paragraph, there were some
7 eminent scientists, not very many but some eminent
8 scientists who were questioning the causal
9 relationship. As I said earlier, I believe, my view is
10 that for the scientific community in general that the
11 issue had been settled.

12 Q Will you please mark this Exhibit No. 3.

13 (Plaintiff's Exhibit No. 3

14 marked for identification.)

15 Q (By Mr. Gruenloh) Doctor, I'm handing you
16 what has been marked as Exhibit No. 3 to the
17 deposition. It's dated December 28th, 1963. It's
18 entitled A Frank Statement to the Public by the Makers
19 of Cigarettes.

20 MR. McCONNELL: Mike, I'm sorry you may have
21 misstated when you gave the date.

22 MR. GRUENLOH: Is it '53? I thought it was
23 '63.

24 MR. McCONNELL: '53.

25 MR. GRUENLOH: I'm sorry, you're right.

1 A. I'm generally familiar with this, yes.

2 Q. (By Mr. Gruenloh) Okay. If you look at the
3 bottom of the first page of that document, the last
4 sentence on the first page reads we believe the products
5 we make are not injurious to health. Do you see that,
6 sir?

7 A. Yes.

8 Q. Now, neither this document nor that statement
9 appeared in your report, isn't that correct?

10 A. That's correct.

11 Q. Did you consider that statement when you were
12 forming your opinion that the residents of West Virginia
13 are informed about the health risks of smoking?

14 A. I did.

15 Q. And if we went back to that stack of
16 materials that you looked at in your intellectual
17 analysis, would that be in that stack of materials, that
18 document?

19 A. This document would be in it, I mean in its
20 published form, that is, as a statement and announcement
21 in one or several newspapers.

22 Q. Can we take five more minutes?

23 MR. McCONNELL: Absolutely.

24 (Break in proceedings.)

25 Q. (By Mr. Gruenloh) Let's take a step back for

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1 a second. Can you tell me what the cigarette
2 manufacturers' current position as we sit here today is
3 on whether cigarettes are injurious to the health?

4 A. Historians tend to live in the past but my
5 recollection is that both Brown and Williamson and
6 Philip Morris have acknowledged formally, publicly that
7 there is a direct relationship between smoking and
8 various diseases.

9 Q. Okay. Do you know what the current position
10 is of any of the cigarette manufacturers, the cigarette
11 manufacturers which are defendants in this case on
12 whether cigarettes cause cancer?

13 A. I can't, I can't speak to that precisely.

14 Q. You don't know?

15 A. I don't know in a precise way, no.

16 Q. Have you made any attempt to find out?

17 A. Only by trying to follow these issues via
18 reports on the Internet and so forth, newspapers. But
19 I'm not certain that I can say with certainty that any
20 cigarette company has said it does cause cancer. Maybe
21 they have.

22 Q. Do you know what their position was on that
23 issue back in the 1960s?

24 A. Not proven.

25 Q. The case as to whether cigarettes cause

1 cancer is not proven?

2 A. I think that's it.

3 Q. Do you know what their position was on that
4 issue back in the 1970s?

5 A. I think the same response would be correct,
6 not proven.

7 Q. Okay. Do you know what their position was on
8 that issue in the 1980s?

9 A. I believe that, the same response was not
10 proven.

11 Q. Do you have any reason to believe that that
12 is not ~~their~~ position today?

13 A. My, as I said earlier, my recollection is
14 that there has been a change in terms of the
15 acknowledgment of some causal relationship but I'm not
16 absolutely, I couldn't be absolutely certain about that.

17 Q. Okay. Is it your opinion today that the
18 residents of West Virginia fully appreciate and
19 understand the risks of addiction to cigarettes?

20 A. Yes.

21 Q. What do you base your opinion on?

22 A. On the historical research that I have
23 undertaken regarding the range of information available
24 about addiction as it was generally accepted.

25 Q. So everybody knows that cigarettes are

1 addictive, is that your testimony?

2 A. Certainly that would be a general view, yes.
3 I wouldn't say -- everybody means everybody so I'm not
4 able to say absolutely everybody but the vast majority,
5 yes.

6 Q. We may have gone over this earlier but -- and
7 I apologize if we did but can you tell me if you have a
8 working definition of addiction?

9 A. We did go over it and I provided, my working
10 definition is, equates to dependency, the need to
11 engender or to obtain further gratification, compulsive,
12 sort of compulsive habit.

13 Q. Have you read the 1988 Surgeon General's
14 report?

15 A. I have done so.

16 Q. What was the subject of that report?

17 A. That was about, dealt with addiction.

18 Q. Do you know whether that report presents an
19 opinion on whether smokers fully appreciate the
20 addictive nature of cigarettes?

21 A. I would not be able right now to say that it
22 does. I'm not absolutely confident about what was
23 stated with regard to the view of general understanding
24 about addiction.

25 Q. Well, in that report there was an analysis

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1 done that compared the relapse rates of people who were
2 trying to quit smoking to the relapse rates of people
3 who were trying to quit heroin and it found that the
4 relapse rates were similar, almost identical. Is it
5 your testimony today that the residents of West Virginia
6 are aware of that information?

7 MR. McCONNELL: Objection to form.

8 A. I would say it is not my testimony that all
9 residents of West Virginia are aware of that
10 observation, that point. I couldn't say that.

11 Q. (By Mr. Gruenloh) Don't you think it's
12 important to know that it's just as hard to quit
13 cigarettes as it is to quit heroin?

14 MR. McCONNELL: Objection to form.

15 A. I think that point has been made in the
16 public media and it was emphasized certainly at the time
17 of the release of the Surgeon General's report, that
18 point as I now recall it. What I'm trying to say is I
19 wouldn't be able to say that all West Virginians knew
20 that. I would think that the majority of them were
21 given that kind of information.

22 Q. (By Mr. Gruenloh) If we go back and look at
23 a slice of time, the year 1960, and compare the
24 knowledge of the public as to the health risks of
25 smoking at that time in 1960, compare that to present

1 day, wouldn't you agree that people know more today
2 about the health risks of smoking than they did in 1960?

3 A. I would agree that they know more today.

4 Q. Have you done any analysis where you've
5 compared the smoking prevalence in the United States in
6 the year 1960 to the smoking prevalence of today?

7 A. I've not done formal analysis of that.

8 Q. As we sit here today do you know whether a
9 larger percentage of Americans smoked in 1960 or a
10 larger percentage smoke today, 2000?

11 A. My strong recollection is that more people
12 smoked in 1960 than smoke today as a percentage.

13 Q. In the course of reviewing your report I
14 didn't see any references to any specific brands of
15 cigarettes. Did I miss that or did you make any
16 references?

17 A. I did not make any references to specific
18 brands.

19 Q. For the purposes of your opinion in this
20 report, does it matter whether somebody smoked Marlboros
21 or Winstons or any other cigarettes?

22 A. As a report relating to awareness of this
23 kind, my view was it did not matter whether a person
24 smoked one brand or another.

25 Q. What was the last case in which you testified

1 where the central issue to the case was tobacco?

2 A. The last deposition that I gave, you said
3 testified. That is, I've not --

4 Q. I'm sorry. Let me rephrase my question.
5 Which was the last case in which you gave a deposition
6 where tobacco was the central issue in the case?

7 A. The last deposition I gave was the Thompson
8 case in Minnesota that was cross noticed with the Clay
9 case in Illinois.

10 Q. Okay. And was your opinion in that case
11 similar to your opinion in this case, that is, that the
12 public is fully informed -- I'm sorry, aware of the
13 health risks of smoking?

14 A. Based upon my research relating to those two
15 cases, yes, the opinion was essentially the same.

16 Q. Okay. Did you testify at trial in that case?

17 A. I did not.

18 Q. Have you ever testified at trial in the trial
19 of any case where tobacco was the central issue in the
20 case?

21 A. No.

22 Q. Has any court ever recognized you as an
23 expert specifically on the public's common knowledge of
24 the health risks of tobacco?

25 A. I don't know how I would answer that

1 question. I mean --

2 Q. Have you ever given testimony in a trial and
3 your attorneys presented you as an expert on that issue
4 and the court in fact recognized you as an expert on
5 that issue?

6 A. No.

7 Q. Give me just a second to review my
8 materials. That might be it.

9 (Off the record.)

10 Q. (By Mr. Gruenloh) Do you know who
11 Dr. Workman is?

12 A. I'm not certain I can say.

13 Q. Have you reviewed the report of Dr. Workman?

14 A. I don't recall.

15 Q. Have you reviewed the reports of any other
16 experts in this case aside from Dr. Burns?

17 A. No.

18 Q. And when you talked to me before about the
19 intellectual analysis that you did where you compared
20 what's out there in the public domain versus the denials
21 that were made by the tobacco industry, the body of
22 information which I'm calling the denials which were
23 made by the tobacco industry, if I were to request that,
24 is that in a file of yours? How would I identify that?

25 A. It's interspersed with the other material.

55

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1 It can be pulled out, I mean, I can identify those
2 documents that I would consider to be statements from
3 the tobacco industry or spokesperson about this issue of
4 denial not proven, whatever, I can do that.

5 MR. GRUENLOH: Okay, no further questions.

6 A. Thank you very much.

7 MR. McCONNELL: We're done.

8 DEPOSITION ADJOURNED.

Produced by R.J.R.T.C.
in

HUMPHREY

C E R T I F I C A T I O N

1
2
3 I, SHERRIE L. MERZ, Certified Shorthand Reporter,
4 Registered Diplomat Reporter and Notary Public, DO
5 HEREBY CERTIFY that pursuant to notice/agreement between
6 the parties, the aforementioned witness came before me
7 at the time and place hereinbefore mentioned, and having
8 been duly sworn to tell the whole truth of his knowledge
9 touching upon the matter in controversy aforesaid; that
10 he was examined on that date and in that behalf
11 aforesaid; and his examination was taken in shorthand
12 and later reduced to printing; that signature by the
13 witness is not waived and said deposition is herewith
14 returned to Ness, Motley, Loadholt, Richardson & Poole
15 for filing with the Court.

16 IN WITNESS WHEREOF, I have hereunto subscribed my
17 name this 1st day of May, 2000.
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22
23
24
25

Sherrie L Merz

SHERRIE L. MERZ, CSR, RDR

Deposition of Theodore A. Wilson

1 STATE OF MISSOURI)
2) SS
3 COUNTY OF _____)
4

5 I, THEODORE A. WILSON, do hereby state that the
6 foregoing statements are true and correct to the best of
7 my knowledge.
8

9 _____
10 THEODORE A. WILSON
11

12
13 Subscribed and sworn to before me this _____ day
14 of _____, 2000.
15

16 _____
17 Notary Public
18

19 My Commission expires:
20 _____
21
22
23
24

25 slm

58

THEODORE A. WILSON

NAME OF DEPONENT

DEPOSITION CORRECTION SHEET

In Re: Christa Blankenship v. Philip Morris .
No. OO-C-6000

Reported By: Sherrie L. Merz, RDR, CSR

Upon reading the deposition and before subscribing
thereto, the deponent indicated the following changes
should be made:

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